JPA File No.: 05-129

AG Contract No.: KR06-0024TRN
Project No.: HRF-SOM-0-826
Project: Roadway Improvements
Section: Somerton Avenue-Fern Street

to County 17

TRACS No.: HF126 01C

**Budget Source Item No.: HURF** 

#### INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF SOMERTON

#### I. RECITALS

- 1. The State is empowered by Arizona Revised Statues § 28-334 and § 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.
- 2. The City is empowered by Arizona Revised Statues § 48-572 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.
- 3. The State has approved the exchange of Highway User Revenue Funds (HURF) pursuant to the amounts and schedule shown in column D of the table below to reconstruct and widen Somerton Avenue from Fern Street to the boundaries of County 17<sup>th</sup> Street. Improvements will include curb, gutter, sidewalk and new AC pavement. Such funds shall be repaid to the State by withholding from the Yuma Metropolitan Panning Organization (YMPO), Federal Apportionment and corresponding Obligation Authority as shown in column B and C in the table below. All such transactions to be made in accordance with the schedule shown in column A.

THEREFORE, in consideration of the mutual Agreements expressed herein, it is agreed as follows:

NO. 28058
Filed with the Secretary of State
Delta Filed: 3-7-0 u

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A Federal Fiscal Year to be Processed	B STP Apportionment to be Charged to YMPO	C STP Obligation Authority to be Charged to YMPO	D 90 %HURF Funds to be Transferred to City
FFY 2006	\$248,791.00	\$245,180.00	\$220,662.00
Total	\$248,791.00	\$245,180.00	\$220,662.00

#### II. SCOPE OF WORK

#### 1. The City shall:

- a. Provide design plans, specifications and other such documents and services required for construction bidding and construction for reconstructing and widening Somerton Avenue from Fern Street to the boundaries of County  $17^{th}$  Street.
- b. Be responsible for any contractor claims required for design of the project for extra compensation due to delays or whatever reason attributable to the City.
- c. Advertise for bids and award one or more construction contracts for the Project. Administer contracts for the project and make all payments to the contractor(s). Be responsible for any contractor claims required to complete the project for extra compensation due to delays or whatever reason attributable to the City. Comply with all applicable State Laws, Rules and Regulations.
- d. Invoice the State for thirty percent (30%) of the cost of construction upon award of the construction project. Total payment by the State to the City shall not exceed the amounts shown in column D above for the Federal Fiscal Year 2006 in which the billing is made.
- e. Invoice the State for 30% of the cost of construction when the project reaches the 30% completion stage. Total payments by the State to the City shall not exceed the amounts shown in column D above for the Federal Fiscal Year 2006 in which the billing is made, plus any carryover amounts not previously paid in prior years.
- f. Invoice the State for 30% of the cost of construction when the project reaches the 60% completion stage. Total payments by the State to the City shall not exceed the amounts shown in column D above for the Federal Fiscal Year 2006 in which the billing is made, plus any carryover amounts not previously paid in prior years.
- g. Upon satisfactory completion of construction, approve and accept the project on behalf of the City, provide for the maintenance, at its own expense. Provide the State with a letter documenting the notice of the approval and acceptance of the project.
- h. Invoice the State for 10% of the cost of construction when the project has been satisfactorily completed and accepted by the City. Total payments by the State to the City shall not exceed the amounts shown in column D above for the Federal Fiscal Year 2006 in which the billing is made, plus any carryover amounts not previously paid in prior years.

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#### 2. The State shall:

a. Withhold from YMPO Federal Funds and the Obligation Authority of Federal Funds in an amount of \$248,791.00 for reconstructing and widening Somerton Avenue from Fern Street to the boundaries of County 17<sup>th</sup> Street.

- b. Within thirty-days (30) after receipt and approval of construction invoices at the thirty and sixty percent construction completion stages, advance the Town HURF funds in the amount of 30% at each invoiced stage for construction.
- c. Within 30 days after the Final Close Out Field Review provide to the State a Final Acceptance Letter.
- d. Within 30 days after receipt and approval of construction invoices, advance the City HURF Funds or the remaining 10% of \$220,662.00 for reconstructing and widening Somerton Avenue from Fern Street to the boundaries of County 17<sup>th</sup> Street.

#### III. MISCELLANEOUS PROVISIONS

- 1. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion of said project, except any provisions for maintenance shall be perpetual, unless assumed by another competent entity. Further, this Agreement may be canceled at any time prior to the award of the project construction contract, upon 30 days written notice to the other party. It is understood and agreed that in the event the City cancels this Agreement, the State shall in no way be obligated to maintain said project.
- 2. The State assumes no financial obligation or liability under this Agreement, or for any resulting construction Project. The City assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost overruns and construction claims. The City shall require its contractors to name the State and ADOT as an additional insured in the contractor's policies. The City shall also require its contractors to name the State and ADOT as an additional indemnitee in the City's contracts with its contractors. It is understood and agreed that the State's participation is confined solely to advancing Highway User Revenue Funds; that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof, shall be solely the liability of the City and that to the extent permitted by law the City hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, misrepresentation, directives, instruction or event arising out of the performance or nonperformance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees, the City, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation and attorneys' fees.
  - 3. This Agreement shall become effective upon filing with the Secretary of State.
  - 4. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.
  - 5. The provisions of Arizona Revised Statutes § 35-214 are applicable to this Agreement.
- 6. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

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7. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail, addressed as follows:

Arizona Department of Transportation Joint Project Administration 205 S. 17th Avenue, Mail Drop 616E Phoenix, Arizona 85007 (602) 712-7525 (602) 712-7424 Fax

City of Somerton Attn: Edmundo Mendez 110 North State Avenue Somerton, Arizona 85350 (928) 627-4115 Fax

- 8. This Agreement is subject to all applicable provisions of the Americans with Disability Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable Federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".
- 9. Non-Availability of Funds: Every payment obligation of the State and Cityunder this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligations. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State and City at the end of the period for which the funds are available. No liability shall accrue to the State or the City in the event this provision is exercised as a result of termination under this paragraph.
- 10. In accordance with Arizona Revised Statues § 11-952 (D) attached hereto and incorporated herein is the written determination of each party's legal counsel and that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

IN WITHNESS WHEREOF, the parties have executed this Amended Agreement the day and year first above written.

CITY OF SOMERTON

STATE OF ARIZONA Department of Transportation

**Division Director** 

Mayor

ATTEST:

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#### ATTORNEY APPROVAL FORM FOR THE CITY OF SOMERTON

I have reviewed the above referenced Intergovernmental Agreement between the State of Arizona, acting by and through its DEPARTMENT OF TRANSPORTATION, and the CITY, an Agreement among public agencies which, has been reviewed pursuant to A.R.S. § 11-951 through § 11-954 and declare this Agreement to be in proper form and within the powers and authority granted to the CITY under the laws of the State of Arizona.

No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this 7th day of February, 2006.

City Attorney



OFFICE OF THE MAYOR CITY OF SOMERTON

# Resolution NO. 945

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF SOMERTON, ARIZONA AUTHORIZING THE MAYOR TO EXECUTE AND THE CITY MANAGER TO ATTEST TO THE INTERGOVERNMENTAL AGREEMENT BETWEEN STATE OF ARIZONA AND CITY OF SOMERTON TO APPROVE THE EXCHANGE OF HIGHWAY USER FUNDS TO THE CITY FOR FEDERAL FISCAL YEAR 2006

WHEREAS, The city is desirous of entering into an Intergovernmental Agreement between the State of Arizona Department of Transportation and City of Somerton to approve the exchange of HURF funds to the City.

**BE IT RESOLVED**, by the Common Council of the City of Somerton, Arizona as follows:

THAT, the City's Mayor is authorized to execute, and City Manager is authorized to attest to, on behalf of the City of Somerton, Arizona, that certain document entitled "INTERGOVERNMENTAL AGREEMENT BETWEEN STATE OF ARIZONA AND CITY OF SOMERTON".

PASSED AND ADOPTED by the Common Council of the City of Somerton, Arizona this \_\_\_\_ day of February, 2006.

Miguel Villalpando, Mayor

ATTEST:

APPROVED AS TO FORM:

Gerald W. Hunt, City Attorney



TERRY GODDARD Attorney General

### OFFICE OF THE ATTORNEY GENERAL

STATE OF ARIZONA

CIVIL DIVISION
TRANSPORTATION SECTION
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602.542.8855
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## INTERGOVERNMENTAL AGREEMENT DETERMINATION

A.G. Contract No. KR06-0024TRN (**JPA 05-129**), an Agreement between public agencies, i.e., The State of Arizona and The City of Somerton, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED:

February 22, 2006

TERRY GODDARD Attorney General

SUSAN E. DAVIS

Assistant Attorney General Transportation Section

SED:mjf:948427 Attachment